



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 30254224

Date: MAR. 28, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks to classify herself as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen]'s entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), specifically addressing the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v)-(vi), (viii)-(ix). On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v)-(vi), (viii)-(ix). The Petitioner does not assert on appeal that the record satisfies any of the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii)-(iv), (vii), or (x), thereby waiving those potential criteria. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). The Petitioner does not overcome the Director’s denial for the reasons discussed below.

Documentation of the [noncitizen’s] membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Director acknowledged that the record establishes the Petitioner is an active member in the Russian Society of Plastic Reconstructive and Aesthetic Surgeons (the RSPRAS), and that the record contains information related to that society. The Director summarized membership criteria and noted that neither general nor “honorary” membership requires outstanding achievements. Rather, in relevant part, “honorary” membership is based on “a simple majority of votes” to determine whether the society considers the recipient “deserving of special honor for a significant contribution.” The Director further noted that the record does not establish the qualifications of the voters who award “honorary” membership, nor does it establish whether a “significant contribution,” contemplated by the society’s voters, may be indicative of the “outstanding achievements” contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). The Director further noted that the record does not establish the Petitioner is an “honorary” member. The Director concluded that, because the record does not establish that the society requires outstanding achievements of their members, “honorary” or otherwise, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the Petitioner asserts that she “submitted with her [request for evidence (RFE)] response her Honorary Membership Certificate which states that it ‘may be a person whom the Organization considers deserving a special honor for a significant contribution.’” We note that, on appeal, the Petitioner does not specifically assert that she believes her membership in the RSPRAS—or anything else—satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

The record does not support the Petitioner’s statements on appeal and, even if it did, it would not establish that the criterion at 8 C.F.R. § 204.5(h)(3)(ii) has been satisfied. The document submitted in response to the Director’s RFE that the Petitioner quotes on appeal is an English copy of the RSPRAS Charter, dated March 15, 1994, as amended both on February 5, 1999, and again in 2007—not a membership certificate. Specifically, general provision 3.7.1.1 of the Charter provides, in relevant part, that an honorary member “may be a person whom the Organization considers deserving of a special honor for a significant contribution.” In contrast, the undated, English copy of the Petitioner’s RSPRAS membership certificate, which she submitted at the time she filed the Form I-140, Immigrant Petition for Alien Workers, not in response to the Director’s RFE, states that the Petitioner “is an active member of Russian Society of Plastic Reconstructive and Aesthetic Surgeons,” not that she is an honorary member or that the RSPRAS considers her “deserving a special honor for a significant contribution.”

Moreover, even if the record established that the Petitioner is an honorary member of the RSPRAS, which it does not, as the Director explained, the record does not establish whether a “significant contribution” contemplated by the RSPRAS for honorary membership may be equivalent to the “outstanding achievements” contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(ii). As the Director further noted, the record does not establish that the individuals who vote on candidates for honorary RSPRAS membership are the type of “recognized national or international experts in their disciplines or fields” contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

Because the record does not establish the Petitioner has a membership in an association in the field for which classification is sought, which requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

Evidence that the [noncitizen] has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Director acknowledged that the record contains letters written by [REDACTED] [REDACTED] The Director summarized the content of the letters; however, the Director observed that they do not establish whether the role the Petitioner has performed for any particular organization or establishment was leading or critical or, furthermore, whether those organizations or establishments have a distinguished reputation. Therefore, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the extent of the Petitioner’s assertions regarding the criterion at 8 C.F.R. § 204.5(h)(3)(viii) is the following: “As stated in the initial filing, [the Petitioner] played a critical role for [REDACTED]”

The record contains a recommendation letter written by [redacted] however, the letter does not reference [redacted] it does not establish whether the [redacted] or any other organization or establishment where the Petitioner has worked—has a distinguished reputation, and it does not establish whether the Petitioner performed a leading or critical role for any such organization or establishment. Instead, the letter asserts, in relevant part, “in 2017, I was trained by [the Petitioner].” The letter further opines, “I knew that [the Petitioner] was a professional in her area,” and it relays gratitude “for the precious knowledge I got.” The letter does not, however, establish which organization or establishment may have employed the Petitioner in 2017 when she trained [redacted] how that unspecified organization or establishment may have a distinguished reputation, and how the Petitioner’s role, apparently as a “trainer,” may have been leading or critical to that organization or establishment.

The record also contains two other letters of recommendation addressed by the Director, written by [redacted] Neither of the letters are dated. The first letter, submitted at the time of filing, notes in relevant part that the Petitioner “took on a very challenging role of my assistant at a complicated circular blepharoplasty surgery combined with second chin liposuction and circular face-lift” in 2018. However, the letter does not elaborate on how the Petitioner’s role of “assistant,” apparently for a single medical procedure, qualifies as the type of leading or critical role for organizations or establishments, contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(viii). Moreover, even if the letter established how the Petitioner’s role of “assistant” for a single medical procedure qualified as a leading or critical role for an organization or establishment, which it does not, the letter does not establish how that organization or establishment—apparently the [redacted] [redacted] Russia, where [redacted] asserted he worked at the time he wrote the letter—has the type of distinguished reputation contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The second letter, this time identifying the writer as [redacted] also is undated; however, the Petitioner submitted it in her March 2023 response to the Director’s October 2022 RFE. The second letter, apparently written sometime between the 2021 filing date and the 2023 RFE response, indicates that [redacted] employer at the unspecified time of writing is the [redacted] which the Petitioner erroneously asserts on appeal was “stated in the initial filing.” The second letter provides directly conflicting statements. Specifically, the letter asserts, “With this letter, I would like to emphasize the critical role of [the Petitioner] for our clinic, and in general for the cosmetology industry.” However, the letter also asserts, “Today [the Petitioner] assists me in carrying out operations.” The letter does not reconcile how the Petitioner’s role as [redacted] assistant may be leading or critical for the [redacted] [redacted] or “for the cosmetology industry.” Moreover, even if the letter provided consistent information regarding how the Petitioner’s role as an assistant may be leading or critical, it does not establish whether the [redacted] has the type of distinguished reputation contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Because the record does not establish that the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the [noncitizen] has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Director acknowledged that the record contains copies of the Petitioner's bank statements, currency conversions, and publications relating to occupational income. However, the Director noted that, unlike evidence such as paystubs from a particular employer, the bank statements "did not describe, or provide evidence to show, which sources of income in the statements were remuneration for work as a cosmetologist." The Director also noted that the publications reflect "average salaries for Russia but [they do not] break down remuneration based on years of experience, specific geographic area, and level of seniority" to better articulate how the Petitioner's salary or remuneration for services may compare in relation to others in the field. Based on those evidentiary deficiencies, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner reasserts that "her bank statements . . . list names of her clients and amounts she received for cosmetology services," and that the bank statements total an annual income of "4,922,027 RUB which equals to 410,168 RUB monthly." The Petitioner further asserts on appeal that the record establishes that "the monthly salary of [c]osmetologists working in Moscow region in Russia is from 50,000 to 180,000."

We first note that the letters from [redacted] discussed above, indicate that the Petitioner works as an assistant "in the city of [redacted] Russia." We take administrative notice that [redacted] is approximately 1,100 miles south of Moscow. The record does not establish how the monthly salary of cosmetologists working in the Moscow region informs what the salary of cosmetologists working approximately 1,100 miles away in [redacted] may be. Furthermore, as the Director noted, the generalized information in the record does not inform how salaries may differ based on years of experience, level of seniority, and other variables that may contextualize salaries or other remuneration.

We next note that the record does not contain copies of the Petitioner's bank statements translated in English. The record contains copies of documents that appear to bear dates and other numbers; however, the text of those documents is written in a language other than English. The regulations specifically require, "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate." 8 C.F.R. § 103.2(b)(3). Rather than submitting a full English language translation of the documents in question, the Petitioner submitted a half-page certification stating, in relevant part, that "according to [the Petitioner's] bank statement for the period from October 5, 2019[,] to October 4, 2020, the bank account received funds in the amount of RUB 4,922,027.38, which is USD 63,028.9." Contrary to the Petitioner's statement on appeal, the certification does not purport that the bank statements "list names of [the Petitioner's] clients and amounts she received for cosmetology services." In summation, the record does not establish what income the Petitioner may have received for services in the relevant field, nor does it establish how that income may relate to others in the field, in the location where the record indicates the Petitioner works, with other relevant factors.

Because the record does not establish whether the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

We need not determine whether the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(v)-(vi) because, even if it did, the record would not satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, we reserve our opinion regarding whether the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(v)-(vi). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established she received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.